



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Okeyo & 7 others v Nyansiongo Tea Factory & 6 others (Environment & Land Case E007 of 2023) [2025] KEELC 4605 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E007 OF 2023**

MN MWANYALE, J

JUNE 19, 2025

BETWEEN

ELIJAH NYABUTO OKEYO 1ST PLAINTIFF
ISAAC MARUIRE NYAKAGWA 2ND PLAINTIFF
COSMA MOSES KIBOMA 3RD PLAINTIFF
THUNATO NYANGITO MAKURU 4TH PLAINTIFF
CHRISTOPHER ONCHIRI NYAGERIA 5TH PLAINTIFF
CHARLES OBUYA MAGERO 6TH PLAINTIFF
HOLIVER MANCE ANDIKA 7TH PLAINTIFF
PAULINA NYABOKE NYABERI 8TH PLAINTIFF

AND

NYANSIONGO TEA FACTORY 1ST DEFENDANT
SANGANYI TEA FACTORY 2ND DEFENDANT
NYANKOBA TEA FACTORY 3RD DEFENDANT
TOMBE TEA FACTORY 4TH DEFENDANT
GIANCHORE TEA FACTORY 5TH DEFENDANT
REGISTRAR OF LANDS-KILGORIS 6TH DEFENDANT
HON ATTORNEY GENERAL 7TH DEFENDANT



RULING

1. Upon consideration of the application dated 29th January 2025 filed by the Plaintiffs/Application seeking temporary injunctive orders against the Defendant/Respondent together with the supporting affidavit thereof deponed by Mr. Isaac Manure Nyakagwa the 1st Plaintiff/Application.
2. The court having taken into consideration the Replying affidavit of James Kerosi Nyagisera (erroneously titled Defence and counter-claim and the ground of opposition filed on 5th February 2025, which raise the issue that the application is resjudicata a similar application having been heard and a ruling dismissing it delivered on 20/9/2023.
3. Upon consideration of the Applicants submissions in which they submit on he issues for determination, to wit
 - i. whether the Application is merited?
 - ii. whether the Applicants are entitled to the reliefs sought and
 - iii. who bears the costs of the application
4. The gist of the submission being that the applicant have a prima facie case as defined in the *Mrao vs First American Limited* arguing that they have title deeds to the suit properties, hence they have demonstrated a prima facie case and that irreparable harm would befall them if the orders are not granted; and thus urge the court to allow their application.
5. Taking into account the submissions of the Respondents who submit that the application is Resjudicata as defined in Section 7 of the *Civil Procedure Act* the Respondents placing reliance on the decision in the case of *Kennedy Mokuva Ongiri Vs. John Nyasende Musima and Florence Nyamoita*, submit that the Ruling delivered by E.M. Washe J on 20/9/2023 relates to a similar application like the one before court hence rendering this application Resjudicata and thus urge the court to dismiss the application.

Issues for determination

6. The court thus frames the following as issues for determination
 - i. Whether or not the application dated 29/01/2025 is Resjudicata
 - ii. Whether or not the application dated 29/01/2025 is merited
 - iii. what reliefs ought to issue
 - iv. who bears the costs of this suit?
7. During the pendency of this application, the Defendant/Respondent filed under a certificate of urgency an application dated 1/4/2025 seeking to injunct the Plaintiffs/Applicants from harvesting eucalyptus trees on the suit properties. On 13/4/2025 the court issued an order for maintance of status quo on the ground, permitting the plaintiffs to cultivate the suit properties but forbidding them from failing any eucalyptus trees on the suit properties known as Transmara/Moiyo/517, 518, 519, 520, 521, 522, 523, 524 and 525 pending delivery of this Ruling today 19/6/2025 and/or further directions of the court.



Analysis and determination

8. On issue number 1, as to whether the application dated 29.01.2025 is Resjudicata.
9. Annexure JKNI in the Replying affidavit of James Kerosi Nyagisera exhibits before court an application dated 20.04.2023 and the ruling dated 20.09.2023 in respect of that application. The said application sought injunctive orders over the same parcels of land save for Transmara/Moyoi/525 herein instead of Transmara/Moyoi/585 in the previous application. The grounds in respect of that application were similar and the deponent in both applications was the same Isaac Manure Nyakagwa.
10. The said application was dismissed by Hon. E.M Washe J vide the ruling delivered on 20.09.2023. Thus, the plea of Resjudicata on the said application is founded as the parties, subject matter and cause of action were similar in both applications and the previous application having been heard and determined by a court of competent jurisdiction, the same falls on all fours on the elements of Resjudicata as stated in Section 7 of the Civil Procedure Act as well as the decision in John Florence Maritime Vs. Cabinet Secretary for Transport and Another where the court held
 - “ 59. For Resjudicata to be invoked in a civil matter the following elements must be demonstrated;
 - a. There is a former judgment or order which is final;
 - b. The judgment or order was on merit;
 - c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties and
 - d. There must be between the first and second action identical parties, subject matter and cause of action....”
11. Having found that the application is Resjudicata, the court shall not dwell into its merits as the application dated 29.01.2025 is herewith struck out with costs.
12. As the court had issued orders of maintenance status quo on an application by the Respondents herein on 13.04.2025 the said orders were to be in effect till today’s ruling, the court extends the said orders till hearing and determination of the suit, for avoidance of doubt, the plaintiffs are permitted to cultivate the suit properties being in possession thereof, but are expressly forbidden from felling any eucalyptus trees on the suit properties; known as Transmara/Moyoi/517, 518, 519, 520, 521, 522, 523, 524 and 525 pending hearing and determination of this suit having extended the status quo the application dated 01.04.2025 is marked as settled in terms of the status quo order.
13. Orders accordingly.

DATED AT KILGORIS THIS 19TH DAY OF JUNE, 2025.

HON. M.N MWANYALE

JUDGE.

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Rono for the Plaintiffs/ Applicants

Ms. Nyaboke for the 1st to 6th Respondents

